IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 307 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIRISH NANALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESHRA for Petitioner No. 1

MR LR POOJARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/12/2001

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application preferred under Sections 397 & 401 CrPC arises from the judgment and order dated 18th July, 1994 passed by the learned

Sessions Judge, Kachchha in Criminal Appeal No. 23 of 1993.

The petitioner was accused of being in possession of 400 kilograms of Aluminium wires belonging to the Gujarat Electricity Board which the petitioner could not account for. The petitioner was, therefore, tried under Section 124 of the Bombay Police Act by the learned Judicial Magistrate, First Class, Anjar in Criminal case no. 2081 of 1991. The learned Magistrate was pleased to convict the petitioner and to impose sentence of rigorous imprisonment for three months and the fine of Rs. 100/=; in default of payment of fine, a further imprisonment for fifteen days was imposed. Feeling aggrieved, the petitioner preferred Criminal Appeal No. 23 of 1993 before the learned Sessions Judge, Kachchha which was dismissed on 18th July, 1994. Feeling aggrieved, the petitioner has preferred the present revision application.

It was alleged that the complainant - a Police Sub-Inspector, while was making investigation in respect of some offence registered in Anjar Police Station as I-CR. No. 2/91 under Section 379 IPC, searched the godown of the petitioner. In the said godown, the complainant found four bundles of aluminium wire weighing 100 kgs. each belonging to the Gujarat Electricity Board. Upon inquiry, the petitioner failed to account for its possession. A complaint, therefore, was lodged under Section 124 of the Bombay Police Act, 1951 [hereinafter referred to as, `the Act'] against the petitioner and one another. The accused were tried by the learned Magistrate. The learned Magistrate was pleased to hold the petitioner guilty under Section 124 of the Act but acquitted the accused no. 2.

Mr. Adesara has submitted that the petitioner had been dealing in scrap metals. The petitioner had produced records to establish that the petitioner had purchased some 865 kgs. of aluminum wire from Gujarat Electricity Board in an auction sale. Of the said aluminium wire, some was disposed of but there was no purchaser for the 400 kgs. of aluminium wire which was seized by the police. Thus, the petitioner having satisfactorily explained his possession of the said aluminium wire, the petitioner could not have been convicted. Mr. Adesara has also contended that the aluminium wire was not the material which was subject matter of search in the offence registered as I-C.R No. 2 of 1991. The petitioner, therefore, could not have been tried under Section 124 of the Act for possessing

the aluminium wire in question. In support of his argument, Mr. Adesara has relied upon judgment of Bombay High Court in the matter of Chandrakant Mahadeo Tavate v. The State of Maharashtra [(1979) Cr.L.R. (Maharashtra) 99] and of Balkrishna Mahadeo Dharkar v. The State of Maharashtra [(1980) Cr.L.R 342].

Learned APP Mr. Poojari has contested the petition and has relied upon the judgment of the Hon'ble Supreme Court in the matter of Champaklal Ganeshmal v. The State of Maharashtra [AIR (1975) SC 160].

In the matter of Chandrakant Mahadeo Tavate [Supra], the accused was dealing in scrap and utensils. He was accused of possessing some 8 brass and copper articles bearing the names of various persons which, according to the police, were stolen articles. The accused had explained his possession showing that the articles were purchased by him as scrap from different customers. The Hon'ble High Court held that once it was accepted that the accused was dealing in scrap and that he was not bound to maintain documents in respect of purchase of the scrap, the accused was not expected to maintain list of persons from whom the scrap material was purchased. In the matter of Balkrishna Mahadeo Dharkar [Supra] also, similar were the facts. The said accused also was dealing in scrap. The Hon'ble High Court held that there was no reason to believe that the property was stolen property. In the matter of Champaklal Ganeshmal [Supra], the Hon'ble Supreme Court has held that, `in order to invoke Section 124 of the Bombay Police Act, 1951, three ingredients must be satisfied. First, the accused must be in the possession of the property or he must have conveyed it or offered it for sale or pawn; Secondly, the property must be one in respect of which the Court has reason to believe that it is either stolen property or property fraudulently obtained and thirdly, the accused must be unable to account for his possession or act to the satisfaction of the Magistrate.'

Be it noted that at the relevant time, the police was investigating an offence punishable under Section 379 IPC registered at Anjar Police Station as I-C.R No. 2 of 1991. However, for the purpose of Sec. 124 of the Act, it is immaterial what the police was searching for. What is relevant is that the petitioner was found to be in possession of some material, the acquisition of which he could not acount for. At the time, one another offence punishable under Secs. 409, 465 & 471 IPC being C.R No. 35 of 1987 was registered against the petitioner in Anjar Police Station and one more such offence was registered

against the petitioner being I-C.R No 118/85 at Kandla Police Station. At the time of search, the petitioner did not produce any material or could not explain how he had procured the said aluminium wire. I am, therefore, of the view that police had good reason to believe that the said wire was stolen property or was acquired by fraud. Once the police had reason to believe that the material in question was either stolen or fraudulently acquired, the onus to prove its lawful possession shall lie on the person from whose possession such material was recovered. It was, therefore, the obligation of the petitioner to satisfy the learned Magistrate the lawful possession of the aluminium wire in question. Mr.Adesara has relied upon xerox receipts issued in respect of 865 kgs. of aluminium wire purchased in the name of Jagruti Sales Corporation. He has submitted that the petitioner has been carrying on his business in names of Jagruti Sales Corporation and Paras Steel Works of both of which the petitioner is the proprietor. I am afraid that the production of xerox copy of receipts was not enough to establish the lawful possession of the aluminium wire in question. The learned Magistrate and the court below have rightly observed first that those receipts and other documents were not admissible in evidence. Second, even if they were admitted in evidence and were considered, did not satisfactorily explain the possession of the aluminium wire in question by the petitioner. The receipts pertain to the aluminium wire purchased by the said firm in the year 1985. The petitioner has failed to establish that the aluminium wire found in his godown in the year 1991 was the same that was purchased in the year 1985. No other satisfactory evidence has been produced by the petitioner. Hence, I am of the view that both the courts below have correctly recorded the conviction of the petitioner. Further, this Court exercising its revisional jurisdiction would not interfere with the conviction and sentence imposed by the Courts below, more particularly based on subjective satisfaction of the learned Magistrate, unless there were manifest error which had resulted into miscarriage of justice. In my view, this is not a case where interference in revisional jurisdiction is called for.

As discussed hereinabove, in the present case, all the above referred ingredients have been satisfied inasmuch as the possession of the aluminium wire by the petitioner is not disputed and there was a reason to believe that it was a stolen property or was fraudulently obtained and the accused had failed to account for his possession to the satisfaction of the learned Magistrate.

For the reasons recorded hereinabove, the Revision Application is dismissed. Rule is discharged. Bail bond stands cancelled.

[Miss R.M Doshit, J.]

Prakash*